DOC. # 5197
ADOPTED 6/29/89

APPLICATION FOR APPROVAL OF A THIRD AMENDMENT TO THE REPORT AND DECISION ON THE MBH ASSOCIATES PROJECT UNDER MASSACHUSETTS GENERAL LAWS (TER.ED.) CHAPTER 121A AS AMENDED, AND CHAPTER 652 OF THE ACTS OF 1960, TO BE UNDERTAKEN AND CARRIED OUT BY A LIMITED PARTNERSHIP ORGANIZED PURSUANT TO M.G.L., c. 109, AND APPROVAL TO ACT AS AN URBAN DEVELOPMENT LIMITED PARTNERSHIP UNDER SAID CHAPTER 121A

On January 24, 1980, the Boston Redevelopment Authority (the Authority) approved the Report and Decision (the Report and Decision) authorizing and approving the application of B&M Associates (B&M) for approval of the rehabilitation of four buildings from 1078 to 1130 Boylston Street with a parking lot at 11 Haviland Street (the Project) under Massachusetts General Laws Chapter 121A of the General Laws and Chapter 652 of the Acts of 1960 both as amended (collectively Chapter 121); said January 24, 1980 Report and Decision was subsequently amended by a First Amendment approved by the Authority on March 20, 1980 changing the name of the owner to MBH Associates ("MBH").

On February 16, 1989, the Authority approved a Second Amendment to the Report and Decision which authorized the construction of a facility for the Fenway Community Health Center (the "Health Center"). This application seeks further Amendment of the Report and Decision to allow the construction of an additional floor to the Health Center, to revise the projected cost of the Project and to request approval of an amendment to the existing 6A Contract, with the City of Boston.

The undersigned on behalf of MBH (the "Applicant") hereby applies to the Authority pursuant to Chapter 121A and the Rules and Regulations issued by the Authority, for approval by the Authority of a Third Amendment to the Report and Decision approved by the Authority. By this application for an amendment, the Applicant is requesting that the project be revised to allow the construction of a Fenway Community Health Center over the existing parking lot and hereby requests the following specified changes to the Report and Decision as amended.

1. The Report and Decision is further amended by deleting the tenth paragraph of Section B and inserting in its place the following:

   > "The lot on Haviland Street directly behind the Boylston Street buildings may be improved by the construction of a below grade parking facility and a three-story clinic and related use building containing approximately 18,000 square feet.

2. The Report and Decision is further amended by deleting

the first paragraph in Section D and inserting in place thereof the following:

"The project as defined in the Application constitutes a 'Project' within the meaning of Section 1 of Chapter 121A of the General Laws, providing as it does for the rehabilitation of four buildings and the construction of below grade parking area and a three floor clinic and related uses building. Upon completion of the construction, the two floors of the clinic will no longer be part of the 121A Agreement but will be required to pay Chapter 59 taxes to the full extent applicable by law.

3. The Report and Decision is further amended by deleting the fifth paragraph of Section D and inserting in place thereof, the following paragraphs:

"The project area also contains a parking lot on Haviland Street, directly behind the Boylston Street buildings which may be improved as follows:

(1) Applicant may construct a structure on the parcel that will contain approximately 18,000 square feet of clinic and related uses space which will be above the level of Haviland Street with 38 parking spaces as a contained parking area which will be below the level of Haviland Street.

(2) The Applicant may construct a three story building, each floor containing approximately 6,000 square feet of space suitable for use as clinic and related uses. The foundation of the building must be sufficient to accommodate an additional story.

(3) On the Haviland Street Level, the property may be improved on the land not used by the building structure by a vehicular access way and a park which will be open to the general public.

(4) After completion of the Building, MBH Associates, for nominal consideration or as a donation, will convey to the Fenway Community Health Clinic, Inc., fee title, including appurtenant easements for access, support, utilities, use, maintenance, etc., to the Clinic Component, using air rights or such other acceptable means but not including condominiumization under Chapter 183A of the General Laws, as well as air rights sufficient to construct a third story to contain approximately 6,000 square feet. Fee title to the Garage Component shall be retained exclusively by MBH Associates as part of the Project and shall be

subject to Chapter 121A, Chapter 652, and this Second Amendment for the remainder of the period of the tax exemption, as set forth in Section K of the Amended Report and Decision.

(5) Ownership in the other four (4) parcels comprising the Project shall remain exclusively in MBH Associates.

4. The Report and Decision is further amended by inserting the following paragraph as a third paragraph of Section E.

"The cost of the construction of the Haviland Street lot segment of the project will be approximately $3,575,000 for the parking area and two clinic and related use floors."

5. To amend the Report and Decision which by authorizing and/or approving, as a change in the Project, and amendment to the existing 6A Contract, by and between the City of Boston and the MBH Associates, substantially in the form as attached hereto as Exhibit "A" and which is incorporate as a part hereof (the "6A Contract Amendment"). This 6A Contract Amendment is acceptable to the Commissioner of Assessing.

6. To ratify and confirm that the zoning deviations for the revised Project previously approved by the Authority on February 16, 1980 as set forth in Section 7 of, and Exhibit "A" to, the Second Amendment to the Report and Decision are still in effect and applicable.

EXECUTED THIS 27 DAY OF June, 1989.

MBH ASSOCIATES

Harold Brown, General Partner

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss June 27, 1989

Then personally appeared before me, Harold Brown, who being duly sworn, made oath to the best of his knowledge and believe the statements contained in the foregoing application are true.

Notary Public Jean Wallace
My Commission expires: 10/6/89

s:fenway4.mbh.62789

AMENDMENT TO 6A CONTRACT BETWEEN
MBH ASSOCIATES
AND THE CITY OF BOSTON

Exhibit "A"

PURSUANT TO SECTION 6A OF
CHAPTER 121A OF THE GENERAL LAWS

AMENDMENT (the "Amendment") made this __ day of _____, 1989, by and between **MBH ASSOCIATES**, a Massachusetts limited partnership (the "Owner"), and the **CITY OF BOSTON**, a municipal corporation of the Commonwealth of Massachusetts (the "City"), acting under Massachusetts General Laws, Chapter 121A, Section 6A, as amended, and every other power and authority hereto enabling. Collectively, the Owner and the City are hereinafter referred to as the "Parties".

W I T N E S S E T H T H A T:

WHEREAS, there was filed on behalf of B & M Associates with the Boston Redevelopment Authority of the Commonwealth of Massachusetts (the "Authority"), an application dated November 8, 1979 (the "Application") under the provisions of Massachusetts General Laws, Chapter 121A, as amended ("Chapte 121A"), and Chapter 652 of the Acts of 1960, as amended, for approval of a project situated in the City of Boston, said project being more particularly described in Paragraph 4 of said Application and in the metes and bounds description of said Application (the "Project");

WHEREAS, the Application sought the approval of the Authority of a project involving 44 units of housing and 21,000 square feet of commercial space (the "Project");

WHEREAS, the Authority adopted a certain Report and Decision on the Project (the "Report and Decision") by a vote on January 24, 1980;

WHEREAS, the Mayor of the City of Boston (the "Mayor") approved the aforementioned vote of the Authority on February 12, 1980;

WHEREAS, the vote of the Authority along with the approval of the Mayor were filed with the office of the City Clerk of the City of Boston (the "City Clerk") on February 19, 1980;

WHEREAS, the Report and Decision was amended by a First Amendment thereto, adopted by a vote of the Authority at a meeting on March 20, 1980, which vote was approved by the Mayor on March 27, 1980 and such vote as approved was filed with the City Clerk on March 27, 1980, which First Amendment changed the name of the partnership which owned the Project subject to Chapter 121A from B & M Associates to MBH Associates;

WHEREAS, the Owner and the City of Boston (the "City") entered into a certain contract, dated as of April 24, 1980, pursuant to Chapter 121A, Section 6A, which contract is incorpor-

ated herein by reference (the "6A Contract");

WHEREAS, the Report and Decision was amended by a Second Amendment thereto adopted by a vote of the Authority at a meeting on February 16, 1989, which vote was approved by the Mayor on March 20, 1989, and such vote as approved was filed with the City Clerk on March 24, 1989, which Second Amendment changed in part the description of the Project; and

WHEREAS, the Report and Decision was amended by a Third Amendment thereto, adopted by a vote of the Authority at a meeting on _____, 1989, which vote was approved by the Mayor on _____, 1989, and such vote as approved was filed with the City Clerk on _____, 1989, which Third Amendment in part further changed the description of the Project and approved and authorized the execution of an amendment to the 6A Contract;

NOW, THEREFORE, the Parties agree as follows:

The 6A Contract is amended by:

1. Inserting the following sub-paragraph as new sub-paragraph 1(d)(iv):

> "Commencing with calendar year 1988, and for each year thereafter, the Owner shall pay no more than eight and 60/100 percent (8.6%) of the total gross income from residential tenants, commercial tenants and parking; provided, however, that for calendar year 1988 and succeeding years thereafter, the Owner shall pay no less than the amount paid pursuant to Chapter 121A, Section 10 and provided further that in any year that the difference between the amount that would be due if calculated pursuant to sub-paragraph 1(d)(iii) of the 6A Contract and the amount due pursuant to this sub-paragraph 1(d)(iv) of the Amendment exceeds seventy thousand dollars ($70,000) then the Owner shall pay to the City as an additional payment hereunder such difference in excess of said seventy thousand dollars ($70,000)."

2. Inserting the following sub-paragraph as new sub-paragraph 1(d)(v):

> "The Owner shall receive a one time credit equal to one-half of the accrued interest on any unpaid amounts due as of April 1, 1989 but in no event more than twenty nine thousand two hundred seventy five dollars ($29,275). The credit shall be available for use by the Owner only at the time the Owner pays to the City such unpaid amounts.

3. By designating the current sub-paragraph 1(d)(iv) as sub-paragraph 1(d)(vi).

4. By inserting the following paragraph as new paragraph 3:

> "Pursuant to the authority conferred by General Laws, Chapter 121A, Section 10, the Board of Assessors of the City hereby determine the maximum fair cash value of the Project,

commencing with calendar year 1989 and succeeding years, shall not exceed an amount which when used in calculating the urban redevelopment excise tax in accordance with the applicable statutory formulae produces an excise equal to or less than the amount due under paragraph 1(d)(iv) of this Amendment. The Board of Assessors of the City agree that such fair cash value shall be certified annually as required, to the Owner and the Department of Revenue, Commonwealth of Massachusetts."

5. By inserting the following paragraph as new paragraph 4:

"In the event the Owner, by and through its contractors, after commencement does not diligently proceed with the construction of the Building and complete same in accordance with the terms of the Amended and Restated Regulatory Agreement, of even date, by and between the Authority and the Owner, required by provisions of the Third Amendment to the Report and Decision on the Project, the Authority's Director may by written notice to the Board of Assessors of the City determine and direct that the right of the Owner to make payments under the formula set forth in sub-paragraph 1(d)(iii), as added by Section 1 of this Amendment and the obligation of the Board of Assessors to make the fair cash value determinations in accordance with Section 4 of this Amendment, shall both be suspended and or revoked, for such period(s) of time as he shall determine, including the full remainder of the period of the tax exemption for the Project, and during such period(s) the Owner shall be obligated to make payments under sub-paragraph 1(d)(iii) of the 6A Contract."

6. By renumbering the remaining paragraphs to confirm the sequence to the changes made herein.

EXECUTED as a sealed instrument the day and year first above written.

MBH ASSOCIATES

By: _____
Harold Brown, General Partner

CITY OF BOSTON

By: _____
Raymond L. Flynn, Mayor

ASSENTED TO:

By: _____
Commissioner of Assessing

APPROVED AS TO FORM:

_____
Corporation Counsel
City of Boston

DISCLOSURE STATEMENT CONCERNING BENEFICIAL INTERESTS CHAPTER 121A PROJECTS IN THE CITY OF BOSTON

(1) Project: MBH Associates

(2) Location: 1080-1130 Boylston Street, Boston, MA

(3) Owner/121 Entity: MBH Associates

(4) I hereby state, under the penalties of perjury, that the true names and addresses of all persons who have or will have a direct or indirect beneficial interest (including the amount of their beneficial interest accurate to within one-half percent) in the above-listed Project and/or Owner/121 Entity are listed below.

NAME AND RESIDENCE OF ALL PERSONS WITH SAID BENEFICIAL INTEREST:

NAME	ADDRESS	PERCENTAGE INTEREST
Harold Brown	39 Brighton Avenue, Boston, MA	90%
R. J. Samia Associates	1500 S. Ocean Blvd., Boca Raton, FL	10%
Robert J. Samia	1500 S. Ocean Blvd., Boca Raton, FL	99.876%
David Samia	130 Bedford Street, Burlington, MA	.062%
Leonard Samia	21 Linden Street, Allston, MA	.062%

If additional space is required, attached separate sheets.

(5) No member official or employee of the Boston Redevelopment Authority or the City of Boston (collectively "Public Bodies") has any beneficial interest, direct or indirect, in the above-listed project and/or the Owner/121 Entity, nor has any member, official, or employee of the Public Bodies participated in any decision relating to the Project or the Owner/121 Entity which affects his or her beneficial interest, direct or indirect, or the interest of any corporation, partnership, or association in which he or she, directly or indirectly, holds an "interest" as such term is defined in Chapter 268A of the Massachusetts General Laws, as amended.

* R. J. Samia Associates consists of Robert J. Samia, David Samia and Leonard Samia, whose percentage of ownership is set forth above.

Signed under the penalties of perjury.

Signature: _____
Harold Brown, General Partner

Date: 7/18/89

Signature: _____

Date: _____

BOSTON REDEVELOPMENT AUTHORITY

THIRD AMENDMENT TO THE REPORT AND DECISION ON THE APPLICATION OF MBH ASSOCIATES (FORMERLY B&M ASSOCIATES) FOR THE AUTHORIZATION AND APPROVAL OF A PROJECT UNDER MASSACHUSETTS GENERAL LAWS (Ter. Ed.) CHAPTER 121A, AS AMENDED, AND CHAPTER 652 OF THE ACTS OF 1960, AS AMENDED, TO BE UNDERTAKEN AND CARRIED OUT BY A LIMITED PARTNERSHIP FORMED UNDER MASSACHUSETTS GENERAL LAWS, CHAPTER 109, AND APPROVAL TO ACT AS AN URBAN REDEVELOPMENT LIMITED PARTNERSHIP UNDER CHAPTER 121A.

A. Prior Proceedings. Reference is made to the following:

1. On January 24, 1980, the Boston Redevelopment Authority (the "Authority") voted to adopt a Report and Decision (the "Report and Decision") on a project now known as MBH Associates (the "Project"). Such vote was approved by the Mayor of the City of Boston (the "Mayor") on February 12, 1980 and the vote as approved was filed with the Clerk of the City of Boston (the "City Clerk") on February 19, 1980. The Project, as more particularly described in the Report and Decision, consisted of the rehabilitation and management of 44 apartments and 21,000 square feet of commercial space with a related surface parking lot.

2. On March 20, 1980, the Authority voted to adopt a First Amendment to the Report and Decision. Such vote was approved by the Mayor on March 27, 1980 and the vote as approved was filed with the City Clerk also on March 27, 1980. The First Amendment changed only the name of the Urban Redevelopment Limited Partnership authorized to undertake the Project from B&M Associates to MBH Associates (hereinafter referred to as "MBH Associates").

3. As of April 24, 1980, a certain agreement under Chapter 121A, Section 6A, was executed by and between MBH Associates, a Massachusetts limited partnership and the designated 121A entity in the Report and Decision, and the City of Boston (the "6A Contract").

4. On February 16, 1989, the Authority by vote adopted a Second Amendment to the Report and Decision (hereinafter referred to separately as the "Second Amendment"). Such vote was approved by the Mayor on March 20, 1989 and the vote as approved was filed with the City Clerk on March 24, 1989. The Second Amendment chang-

ed the Project by authorizing in part the construction of a combined garage and two-story (with the option for a third story) facility (collectively, the "Building" and separately the "Garage Component" and the "Clinic Component") on the existing surface parking lot within the Project Area.

The Report and Decision and First and Second Amendments thereto are collectively hereinafter referred to as the "Amended Report and Decision". Capitalized terms not defined herein shall have the meanings set forth in the Amended Report and Decision.

B. Application for Third Amendment. By an Application for a Third Amendment to the Report and Decision, dated as of June 27, 1989, filed on behalf of MBH Associates by its General Partner, Harold Brown, with Exhibit "A" attached thereto (the "Third Amendment Application"), approval was requested in part, of changes to the Building and related land authorized by the Second Amendment (principally, to change the Clinic Component from two to three stories and to increase the estimated cost of construction), of an amendment to the 6A Contract and further, ratification and/or confirmation of the zoning deviations previously approved by the Authority in the Second Amendment. The Third Amendment Application, in its entirety, is incorporated as a part hereof by reference. Previously, MBH Associates had filed with the Authority a certain document entitled, "Disclosure Statement Concerning Beneficial Interests, Chapter 121A Projects In The City of Boston", dated as of February 15, 1989. (This document was referenced in the Second Amendment and is hereinafter referred to as the "Supplementary Material"). The Supplementary Material is also incorporated as a part hereof by reference.

C. Authority Action. In acting hereunder, the Authority has considered the Third Amendment Application itself, all documents and exhibits filed therewith or referred to therein, the Supplementary Material and other materials, sufficient in the Authority's judgment to enable it to act hereunder.

D. Decision. The Authority hereby acts as follows:

1. Approval. The Third Amendment Application is hereby approved and the Report and Decision as amended by the First and Second Amendments are hereby further amended to the extent hereinafter set forth. If there is an inconsistency between the Third Amendment Application and this document (the "Third Amendment"), the provisions of this Third Amendment shall govern.

2. General Findings. The Authority hereby finds and determines that: (a) the changes in the Project as set forth in this Third Amendment do not constitute separately or collectively a fundamental change to the Project in accordance with Chapter 652 of the Acts of 1960, Section 13A, as amended; (b) except to the extent inconsistent with the provisions of this Third Amendment, all of the findings, determinations, approvals and consents contained in the Amended Report and Decision, including specifically those additional zoning deviations referenced in Section E(7) of, and set forth in Exhibit "A" to, the Second Amendment, are hereby ratified and confirmed; (c) this Third Amendment conforms to and complies with the provisions of Chapter 121A of the General Laws, as amended ("Chapter 121A"), Chapter 652 of the Acts of 1960, as amended, and the Authority's Rules and Regulations Governing 121A Projects in the City of Boston (the "Rules and Regulations"); and (d) any procedural or other requirements of the Rules and Regulations which may not have been complied with in the Third Amendment Application or the Authority's proceedings are hereby waived.

3. Changes and Additions to Amended Report and Decision. The Authority hereby further amends the Amended Report and Decision by making certain deletions to the Second Amendment and insertions in place thereof, as stated below:

a. By deleting in its entirety the paragraph inserted by Section E(3)(a) of the Second Amendment and inserting in place thereof the following new paragraph:

> "The parking lot at 5-11 Haviland Street (the "Haviland Street Property"), located directly behind the four

buildings at 1078-1080, 1088-1094, 1100 and 1120-1130 Boylston Street (collectively, the "Boylston Street Properties"), presently serves the residential and commercial tenants of the Project. In accordance with this Third Amendment, the Haviland Street Property may be improved by MBH Associates through the construction of one building containing a below grade parking facility and above a three-story health clinic and related institutional use facility containing approximately 18,000 square feet, as more fully described hereafter in Section D, as revised by this Third Amendment."

b. By deleting in its entirety the paragraph inserted by Section E(3)(b) of the Second Amendment and inserting in place thereof the following new paragraph:

"The Project, as described in the original Application, the Amended Report and Decision, and as changed by this Third Amendment, constitutes a "Project" within the meaning of Section 1 of Chapter 121A of the General Laws, as amended, providing as it does for the rehabilitation of the four Boylston Street Properties and the construction of one building (the "Building") containing a below grade parking facility (the "Garage Component") and a three-story health clinic and related institutional use facility (the "Clinic Component") on the Haviland Street Property. Subject to the provisions of the Regulatory Agreement or the Amended and Restated Regulatory Agreement required by this Third Amendment, upon the recording in the Suffolk County Registry of Deeds of both a Certificate of Completion for the Building as issued by the Authority to MBH Associates and an instrument of conveyance in connection with the transfer of fee title to the Clinic Component from MBH Associates to the Fenway Community Health Center, Inc., as hereinafter described, the Clinic Component shall be severed from the Project Area and released from all applicable restrictions, benefits

and exemptions imposed or conferred by Chapter 121A or Chapter 652. Specifically, the Clinic Component will no longer be exempt from taxes, excises or assessments, as set forth in Section 10 of Chapter 121A, and shall thereafter be subject to any and all real and personal property, taxes, excises and assessments to the extent imposed by Chapter 59 of the General Laws, as amended, and other applicable statutes and laws."

c. By deleting in their entirety the paragraph and four subparagraphs inserted by Section E(3)(c) of the Second Amendment and inserting in place thereof the following new paragraph and five subparagraphs:

"The Project Area also contains a parking lot on the Haviland Street Property, directly behind the Boylston Street Properties, which may be improved as follows:

(1) MBH Associates may construct the Building which will contain the Garage Component with approximately 38 parking spaces to serve the residential, commercial and institutional tenants of the Project, and the Clinic Component consisting of three stories, containing approximately 6,000 square feet per story, for a total of approximately 18,000 square feet. The Building will be designed to include a foundation and footings to support a three-story Clinic Component, and there is no present intention to construct any additional stories. However, in the event a fourth story is subsequently proposed or constructed, the exterior wall of said fourth floor adjacent to the entire land and building located at 13 Haviland Street (collectively hereinafter referred to as "13 Haviland Street") shall be set back twenty feet from the Building line. Such fourth floor may be built in such a manner as is reasonably necessary to preserve the consistency of the front facade of the Building facing Haviland

Street.

(2) On the Haviland Street level, the property may be improved on the land not used for the Building by a vehicular access way and landscaped open space. Provided however, that the land between the Building and 13 Haviland Street, except as provided in (4) and (5) below, shall remain open space with tree and yew plantings and other consistent open space improvements. No vehicles, parking, storage, including trash or dumpsters, shall be allowed at any time on that part of the property located between the Building and 13 Haviland Street.

(3) After completion of the Building, MBH Associates, for nominal consideration or as a donation, will convey to the Fenway Community Health Center, Inc. (the "Fenway Health Center"), fee title, including appurtenant easements for access, support, utilities, use, maintenance, etc., to the Clinic Component, using air rights or such other acceptable means but not including condominiumization under Chapter 183A of the General Laws. Fee title to the Garage Component shall be retained exclusively by MBH Associates as part of the Project and shall be subject to Chapter 121A, Chapter 652, and this Third Amendment for the remainder of the period of the tax exemption, as set forth in Section K of the Report and Decision. Ownership of the Boylston Street Properties and the related parcels which comprise the rest of the Project, shall remain exclusively with MBH Associates.

(4) Commencing with the completion of the construction of the Clinic Component, as evidenced by the issuance of the Certificate of Completion, and upon receipt of notice of same by Daniel Alex, the

owner of 13 Haviland Street, (the "Abutter"), until the ninetieth (90th) day thereafter, the Abutter shall have a license to enter the portion of the Project Area being the land between the Building and 13 Haviland Street for the purpose of laying brickwork over a portion of said land shown and identified on the Project Plans (the "Plans") as "Permitted Brickwork Area", as long as the Abutter: (i) performs such work in accordance with plans approved by MBH Associates and the Fenway Health Center, which approvals shall not be unreasonably withheld or delayed; provided that, prior to the Abutter commencing the work, upon notice and subject to an agreement by the Abutter, the Abutter may pay the reasonable costs or expenses incurred by MBH Associates and the Fenway Health Center relating to legal, architectural, contractor's or other such review, if any, of the Abutter's construction plans; (ii) performs such work at the Abutter's sole cost and expense; (iii) agrees to indemnify and hold harmless MBH Associates and the Fenway Health Center from and against any loss, cost, expense or liability for any costs, expenses, damage or injury incurred by MBH Associates or the Fenway Health Center, arising out of or in any way connected with Abutter's exercise of rights to perform such work; (iv) coordinates said work with MBH Associates' contractor and the construction of the Clinic Component, and (v) Abutter complies with such other reasonable requirements of MBH Associates or the Fenway Health Center in connection therewith. The Abutter shall not be liable to pay costs or expenses of maintenance or repair except in the event of defective workmanship or materials.

(5) Commencing with the completion of construction of the Clinic Component, as evidenced by

the issuance of the Certificate of Completion, and upon the Abutter's receipt of notice of same, until the eighteenth (18th) month thereafter, the Abutter may enter the land between the Building and 13 Haviland Street for the purpose of constructing a boiler smokestack within the area extending forty eight inches from the Haviland Street sidewalk along side of the building at 13 Haviland Street and extending eighteen inches toward the Building, all as shown on the Plans, as long as the Abutter: (i) performs such work in accordance with plans approved by MBH Associates and the Fenway Health Center, which approvals shall not be unreasonably withheld or delayed; provided that, prior to the Abutter commencing the work, upon notice and subject to an agreement by the Abutter, the Abutter may pay the reasonable costs or expenses incurred by MBH Associates and the Fenway Health Center relating to legal, architectural, contractor's or other such review, if any, of the Abutter's construction plans; (ii) performs such work at the Abutter's sole cost and expense; (iii) agrees to indemnify and hold harmless MBH Associates and the Fenway Health Center from and against any loss, cost, expense or liability for any costs, expenses, damage or injury incurred by MBH Associates or the Fenway Health Center arising out of or in any way connected with the Abutter's exercise of rights to perform such work; (iv) coordinates said work with MBH Associates' contractor and the construction of the Clinic Component; and (v) the Abutter complies with such other reasonable requirements of MBH Associates or the Fenway Health Center, in connection therewith including that the Abutter shall be solely liable for and will forthwith and duly pay all costs and expenses of maintenance and repair of the constructed smokestack."

d. By deleting in its entirety the paragraph added by Section E(4)(a) of the Second Amendment and inserting in place thereof the following new paragraph:

> "The Authority hereby approves and accordingly authorizes the execution of an amendment to the 6A Contract for the Project, in substantially the form as attached to this Third Amendment, with such other terms and conditions not inconsistent therewith, that the Mayor or the Commissioner of Assessing of the City of Boston may deem necessary and in the best interests of the City."

e. By deleting in its entirety the paragraph added by Section E(4)(b) of the Second Amendment and inserting in place thereof the following new paragraph:

> "The cost of construction of the Building, consisting of both the Garage and Clinic Components, on the Haviland Street Property, has been realistically estimated to be approximately $3,575,000. Notwithstanding any provisions of the Amended Report and Decision to the contrary, MBH Associates may grant a mortgage or mortgages to finance the construction of the Building to institutional lenders."

4. Environmental Considerations. Pursuant to the provisions of Section 61 of Chapter 30 of the General Laws, as amended, the Authority hereby finds and determines that the Project as changed by this Third Amendment, will not result in significant damage to or impairment of the environment and further finds and determines that all practicable and feasible means and measures will be utilized by MBH Associates to avoid or minimize damage to the environment in accordance with the Regulatory Agreement or Amended and Restated Regulatory Agreement required by this Third Amendment.

5. Rules and Regulations. Section E(6) of the Second Amendment is hereby deleted in its entirety and the following new Sec-

tion is inserted in place thereof:

"Notwithstanding the minimum standard for financing, construction, maintenance and management of the original Project and any other rules and regulations, as set forth or referred to in the Amended Report and Decision, the Authority hereby imposes as additional rules and regulations on the Project as changed by this Third Amendment, and requires MBH Associates, prior to filing an application with the Inspectional Services Department of the City of Boston for any building permit to: (a) submit to the Authority for its review and approval all plans and specifications for the Project as changed by this Third Amendment and accept such changes and modifications thereto as the Authority may in its discretion impose; (b) enter into a Memorandum of Understanding or other agreement with Fenway Community Health Center, Inc., the terms and conditions of which must be acceptable to the Authority's Director, in his discretion; (c) enter into a Regulatory Agreement or an Amended and Restated Regulatory Agreement with the Authority for the Project as changed by this Third Amendment pursuant to the requirements of Section 18C of Chapter 121A and containing such other terms and conditions, not inconsistent with this Third Amendment, as the Authority's Director in his discretion deems necessary and appropriate, which shall supersede and replace in its entirety any other Regulatory Agreement previously executed between the Authority and B&M Associates or MBH Associates; and (d) enter into the 6A Contract Amendment with the City of Boston, substantially in the form as attached to this Third Amendment."

6. Validating of Amended Report and Decision. All provisions of the Amended Report and Decision that are not specifically amended or revised by this Third Amendment shall remain in force and effect.

7. Severability. In the event any provisions of this Third Amendment shall be held invalid or unenforceable on its face or as applied by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

ATTACHMENT TO THIRD AMENDMENT TO REPORT AND DECISION

Amendment to 6A Contract

AMENDMENT TO 6A CONTRACT BETWEEN

MBH ASSOCIATES

AND THE CITY OF BOSTON

PURSUANT TO SECTION 6A OF

CHAPTER 121A OF THE GENERAL LAWS

AMENDMENT (the "Amendment") made this __ day of _____, 1989, by and between **MBH ASSOCIATES**, a Massachusetts limited partnership (the "Owner"), and the **CITY OF BOSTON**, a municipal corporation of the Commonwealth of Massachusetts (the "City"), acting under Massachusetts General Laws, Chapter 121A, Section 6A, as amended, and every other power and authority hereto enabling. Collectively, the Owner and the City are hereinafter referred to as the "Parties".

W I T N E S S E T H T H A T:

WHEREAS, there was filed on behalf of B & M Associates with the Boston Redevelopment Authority of the Commonwealth of Massachusetts (the "Authority"), an application dated November 8, 1979 (the "Application") under the provisions of Massachusetts General Laws, Chapter 121A, as amended ("Chapte 121A"), and Chapter 652 of the Acts of 1960, as amended, for approval of a project situated in the City of Boston, said project being more particularly described in Paragraph 4 of said Application and in the metes and bounds description of said Application (the "Project");

WHEREAS, the Application sought the approval of the Authority of a project involving 44 units of housing and 21,000 square feet of commercial space (the "Project");

WHEREAS, the Authority adopted a certain Report and Decision on the Project (the "Report and Decision") by a vote on January 24, 1980;

WHEREAS, the Mayor of the City of Boston (the "Mayor") approved the aforementioned vote of the Authority on February 12, 1980;

WHEREAS, the vote of the Authority along with the approval of the Mayor were filed with the office of the City Clerk of the City of Boston (the "City Clerk") on February 19, 1980;

WHEREAS, the Report and Decision was amended by a First Amendment thereto, adopted by a vote of the Authority at a meeting on March 20, 1980, which vote was approved by the Mayor on March 27, 1980 and such vote as approved was filed with the City Clerk on March 27, 1980, which First Amendment changed the name of the partnership which owned the Project subject to Chapter 121A from B & M Associates to MBH Associates;

WHEREAS, the Owner and the City of Boston (the "City") entered into a certain contract, dated as of April 24, 1980, pursuant to Chapter 121A, Section 6A, which contract is incorpor-

ated herein by reference (the "6A Contract");

WHEREAS, the Report and Decision was amended by a Second Amendment thereto adopted by a vote of the Authority at a meeting on February 16, 1989, which vote was approved by the Mayor on March 20, 1989, and such vote as approved was filed with the City Clerk on March 24, 1989, which Second Amendment changed in part the description of the Project; and

WHEREAS, the Report and Decision was amended by a Third Amendment thereto, adopted by a vote of the Authority at a meeting on _____, 1989, which vote was approved by the Mayor on _____, 1989, and such vote as approved was filed with the City Clerk on _____, 1989, which Third Amendment in part further changed the description of the Project and approved and authorized the execution of an amendment to the 6A Contract;

NOW, THEREFORE, the Parties agree as follows:

The 6A Contract is amended by:

1. Inserting the following sub-paragraph as new sub-paragraph 1(d)(iv):

> "Commencing with calendar year 1988, and for each year thereafter, the Owner shall pay no more than eight and 60/100 percent (8.6%) of the total gross income from residential tenants, commercial tenants and parking; provided, however, that for calendar year 1988 and succeeding years thereafter, the Owner shall pay no less than the amount paid pursuant to Chapter 121A, Section 10 and provided further that in any year that the difference between the amount that would be due if calculated pursuant to sub-paragraph 1(d)(iii) of the 6A Contract and the amount due pursuant to this sub-paragraph 1(d)(iv) of the Amendment exceeds seventy thousand dollars ($70,000) then the Owner shall pay to the City as an additional payment hereunder such difference in excess of said seventy thousand dollars ($70,000)."

2. Inserting the following sub-paragraph as new sub-paragraph 1(d)(v):

> "The Owner shall receive a one time credit equal to one-half of the accrued interest on any unpaid amounts due as of April 1, 1989 but in no event more than twenty nine thousand two hundred seventy five dollars ($29,275). The credit shall be available for use by the Owner only at the time the Owner pays to the City such unpaid amounts.

3. By designating the current sub-paragraph 1(d)(iv) as sub-paragraph 1(d)(vi).

4. By inserting the following paragraph as new paragraph 3:

> "Pursuant to the authority conferred by General Laws, Chapter 121A, Section 10, the Board of Assessors of the City hereby determine the maximum fair cash value of the Project,

commencing with calendar year 1989 and succeeding years, shall not exceed an amount which when used in calculating the urban redevelopment excise tax in accordance with the applicable statutory formulae produces an excise equal to or less than the amount due under paragraph 1(d)(iv) of this Amendment. The Board of Assessors of the City agree that such fair cash value shall be certified annually as required, to the Owner and the Department of Revenue, Commonwealth of Massachusetts."

5. By inserting the following paragraph as new paragraph 4:

"In the event the Owner, by and through its contractors, after commencement does not diligently proceed with the construction of the Building and complete same in accordance with the terms of the Amended and Restated Regulatory Agreement, of even date, by and between the Authority and the Owner, required by provisions of the Third Amendment to the Report and Decision on the Project, the Authority's Director may by written notice to the Board of Assessors of the City determine and direct that the right of the Owner to make payments under the formula set forth in sub-paragraph 1(d)(iii), as added by Section 1 of this Amendment and the obligation of the Board of Assessors to make the fair cash value determinations in accordance with Section 4 of this Amendment, shall both be suspended and or revoked, for such period(s) of time as he shall determine, including the full remainder of the period of the tax exemption for the Project, and during such period(s) the Owner shall be obligated to make payments under sub-paragraph 1(d)(iii) of the 6A Contract."

6. By renumbering the remaining paragraphs to confirm the sequence to the changes made herein.

EXECUTED as a sealed instrument the day and year first above written.

MBH ASSOCIATES

By: _____
Harold Brown, General Partner

CITY OF BOSTON

By: _____
Raymond L. Flynn, Mayor

ASSENTED TO:

By: _____
Commissioner of Assessing

APPROVED AS TO FORM:

_____
Corporation Counsel
City of Boston

TAKEN UNDER ADVISEMENT: JUNE 15, 1989
REVISED AND RESUBMITTED: JUNE 29, 1989

8

MEMORANDUM **JUNE 29, 1989**

TO: BOSTON REDEVELOPMENT AUTHORITY and
STEPHEN COYLE, DIRECTOR

FROM: WILLIAM D. WHITNEY, ASSISTANT DIRECTOR FOR
URBAN DESIGN AND DEVELOPMENT
PETER DREIER, DIRECTOR OF HOUSING

SUBJECT: THIRD AMENDMENT TO THE REPORT AND DECISION ON THE MBH ASSOCIATES CHAPTER 121A PROJECT

EXECUTIVE SUMMARY: Request adoption of a Third Amendment to the Report and Decision on the MBH Associates Chapter 121A Project, which involves primarily certain changes to the Project previously authorized by the Second Amendment and to approve a related Amendment to the existing 6A Contract.

Project Background

On February 16, 1989, the Authority approved the Second Amendment to the Report and Decision (the "Second Amendment") for the MBH Associates Chapter 121A Project (the "Project") in the Fenway Urban Renewal Area. MBH Associates' original Project consisted of five parcels bounded by Massachusetts Avenue, and Boylston, Hemenway and Haviland Streets. Four of these parcels are developed. The fifth parcel, located at 5-11 Haviland Street, is currently used as an open-air parking lot. The Project changes approved by the Second Amendment involved the construction by MBH Associates of a building containing a 38-car below-grade garage (the "Garage Component"), and two floors of approximately 6,000 square feet each of clinic and related institutional use office space (the "Clinic Component"), to be occupied by the Fenway Community Health Center, Inc. (the "Fenway Health Center").

Upon completion, MBH Associates will convey the Clinic Component of the Project to the Fenway Health Center for a nominal consideration or as a charitable contribution. The Clinic Component will no longer be subject to Chapter 121A after conveyance, although the Garage Component will remain as part of the 121A Project. As approved in the Second Amendment, the building was to have adequate foundations to support an additional third floor to be constructed by the Fenway Health Center in the future.

Third Amendment to Report and Decision

As a result of subsequent analysis, the Fenway Health Center has determined that its current space needs dictate that the facility to be provided by MBH Associates consist of three instead of two floors with approximately 18,000 square feet of space. The Fenway

Health Center approached MBH Associates to seek the addition of a third floor to the building. This addition requires the adoption of a Third Amendment to the Report and Decision (the "Third Amendment").

Primarily, the Third Amendment would change the description of the facility to be three stories with an estimated construction cost of $3,575,000 instead of $1,500,000, and authorize the execution of an Amendment to the existing 6A Contract.

MBH Associates has entered into discussions with Authority and Assessing Department staffs regarding the means to accomplish the construction of the facility. A General Partner of MBH Associates, Harold Brown, is also a General Partner of the Atrium On Commonwealth Associates, a limited partnership which owns a 218-unit residential project with some commercial space in Brighton known as the Atrium. The Atrium is also a Chapter 121A Project. MBH Associates has proposed that the City of Boston amend the existing 6A Contracts for both the MBH and Atrium On Commonwealth Chapter 121A Projects to cover the cost of construction of the proposed three story facility for the Fenway Health Center.

Authority and Assessing Department staffs have reviewed the costs for the facility submitted by MBH Associates and have analyzed the value of the savings that would be realized as a result of the proposed 6A Contract Amendments. Based on the proposed construction costs submitted by MBH Associates, the reduction in payments under both 6A Contract Amendments would not exceed the cost of construction.

Enclosed herewith are copies of the following documents:

Analysis of Construction Costs and Tax Benefits for Fenway Community Health Center with Tables 2 and 3 attached;

Commissioner of Assessing's letter of June 15, 1989 supporting the approval of the 6A Contract Amendments for both the MBH and Atrium Chapter 121A Projects;

Application for Third Amendment to the Report and Decision, dated June 27, 1989, filed on behalf of MBH Associates;

Disclosure Statement Concerning Beneficial Interests, dated February 15, 1989, previously filed on behalf of Atrium Associates; and

Proposed Third Amendment to the Report and Decision for adoption.

The siting of the Fenway Health Center facility at this location has the support of the community, including the Fenway Community Development Corporation, the Fenway Civic Association as well as City Councillors Scondras and Salerno. Further, the concerns of the owner of 13 Haviland Street have been addressed to his satis-

faction and appropriate provisions have been inserted in the Third Amendment.

Therefore, it is recommended that the Authority adopt the Third Amendment to the Report and Decision on the MBH Associates Chapter 121A Project as presented.

An appropriate vote follows:

VOTED: That the document presented at this meeting entitled, "THIRD AMENDMENT TO THE REPORT AND DECISION ON THE APPLICATION OF MBH ASSOCIATES (FORMERLY B&M ASSOCIATES) FOR THE AUTHORIZATION AND APPROVAL OF A PROJECT UNDER MASSACHUSETTS GENERAL LAWS (Ter. Ed.) CHAPTER 121A, AS AMENDED, AND CHAPTER 652 OF THE ACTS OF 1960, AS AMENDED, TO BE UNDERTAKEN AND CARRIED OUT BY A LIMITED PARTNERSHIP FORMED UNDER MASSACHUSETTS GENERAL LAWS, CHAPTER 109, AND APPROVAL TO ACT AS AN URBAN REDEVELOPMENT LIMITED PARTNERSHIP UNDER CHAPTER 121A", be and hereby is approved and adopted.

FENWAY COMMUNITY HEALTH CENTER

Construction Costs

1. Hards and Soft Costs.....$3,575,000
2. Interest..... 2,145,571
3. TOTAL..... 5,720,571

Tax Deduction on Interest Payments

4. Interest Payments..... 2,145,571
5. Net Present Value @ 10.5%..... 1,504,152
6. Tax Rate..... 28%
7. Present Value of Interest Deductions..... 421,163

Charitable Tax Deduction

8. Building Cost Less Basement (Parking).....2,200,000
9. Tax Rate..... 28%
10. Charitable Tax Deduction..... 616,000
11. Net Present Value..... 338,382

Summary

A. 121A Savings (See Tables 2 & 3 for Details).4,531,721
B. Credit..... 143,225
C. Total Savings.....4,674,946
D. Less Construction Costs.....5,345,571
E. Sub-Total..... (670,625)
F. Plus Present Value of Interest Deductions..... 421,163
G. Plus Present value of Charitable Deduction..... 338,382
H. Less Land Cost..... 375,000
I. Net Benefit to Developer.....(286,080)

FENWAY AREA HEALTH CENTER
PROPOSED SAVINGS FROM AMENDING ATRIUM AGREEMENT
TABLE 2
JUNE 6, 1989

YEAR	GROSS INCOME	6A PERCENT	6A PAYMENT	C.59 PERCENT	C. 59 TAX	TAX SAVINGS	PROPOSED AGREEMENT
1988	2,879,175	0.218	627,660	0.086	247,609	380,051	230,982
1989	2,951,154	0.218	643,352	0.086	253,799	389,552	389,552
1990	3,024,933	0.218	659,435	0.086	260,144	399,291	399,291
1991	3,100,556	0.218	675,921	0.086	266,648	409,273	409,273
1992	3,178,070	0.218	692,819	0.086	273,314	419,505	419,505
1993	3,257,522	0.218	710,140	0.086	280,147	429,993	429,993
1994	3,338,960	0.218	727,893	0.086	287,151	440,743	431,000
1995	3,422,434	0.218	746,091	0.086	294,329	451,761	431,000
1996	3,507,995	0.218	764,743	0.086	301,688	463,055	431,000
1997	3,595,695	0.218	783,861	0.086	309,230	474,632	431,000
							4,002,597

FENWAY AREA HEALTH CENTER
PROPOSED SAVINGS FROM AMENDING MBH AGREEMENT
TABLE 3
JUNE 6, 1989

YEAR	GROSS INCOME	6A PERCENT	6A PAYMENT	C.59 PERCENT	C. 59 TAX	TAX SAVINGS	PROPOSED AGREEMENT
1988	520,593	0.215	111,927	0.093	48,415	63,512	48,900
1989	533,608	0.215	114,726	0.093	49,626	65,100	65,100
1990	546,948	0.215	117,594	0.093	50,866	66,728	66,728
1991	560,622	0.215	120,534	0.093	52,138	68,396	68,396
1992	574,637	0.215	123,547	0.093	53,441	70,106	70,000
1993	589,003	0.215	126,636	0.093	54,777	71,858	70,000
1994	603,728	0.215	129,802	0.093	56,147	73,655	70,000
1995	618,822	0.215	133,047	0.093	57,550	75,496	70,000
							529,124

ASSESSING DEPARTMENT
CITY OF BOSTON

June 15, 1989

Clarence Jones
Chairman
Boston Redevelopment Authority
Boston City Hall
Boston, Massachusetts 02201

Dear Mr. Jones:

I am writing to express my support for amending the Section 6A Contracts between the City and MBH Associates ("MBH") and Atrium on Commonwealth Associates ("Atrium").

On February 16, 1989, the Boston Redevelopment Authority approved a second amendment to the report and decision authorizing the construction of a health clinic to be operated by Fenway Community Health Clinic, Inc. At the time the second amendment was approved, a two story clinic was contemplated. Further review of the health needs of the community has shown an immediate need for construction of a three floor clinic.

The proposed amendments to the contracts with MBH and Atrium will assist the financial feasibility of the project. Staff members from the Assessing Department and the Boston Redevelopment Authority have met with representatives of MBH and Atrium. Based on the cost of construction as provided by MBH's representatives, the proposed reductions in payments to the City will not exceed the cost of construction.

The Assessing Department is prepared to certify maximum fair cash values to effectuate the proposed reductions.

The Fenway Community Health Clinic, Inc. provides an essential service. Additionally, there has been a broad base of community support for this project.

For all these reasons, I support the proposed amendments to the contracts subject to agreement on final contract language..

Very truly yours,

Thaddeus J. Jankowski, Jr.
Commissioner